

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 4, 2003

To: The Commission
(Meeting of June 5, 2003)

From: Alan LoFaso, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: AB 808 (Canciamilla and Richman): Energy: agency
consolidation.**
As amended April 30, 2003

Legislative Subcommittee Recommendation: Seek amendment.

Summary: This bill would create the outline of an Energy Agency to assume responsibility for all major energy policy making responsibilities, transfer specified jurisdiction of the Commission to that agency, and require the Governor to submit a reorganization plan to provide for the detail of this energy reorganization proposal.

Digest: Existing law, the California Constitution, Art. XII, sec. 3, provides that private corporations and persons that own, operate, control, or manage “the production, generation, transmission, or furnishing of heat, light, ... [or] power ... are public utilities subject to control by the Legislature. Sec. 5 additionally provides that Legislature has plenary power over the Commission, including the authority “to confer additional authority and jurisdiction upon the [C]ommission...”

Existing law, the “Public Utilities Act” (P.U. Code sec. 201 et. seq., most recently codified by Chapter 764, Statutes of 1951), provides that electrical and gas corporations are public utilities, conferring jurisdiction upon the Commission to regulate these entities, as specified.

Existing law, the California Constitution, Art. V, sec. 6, provides for submission of government reorganization plans by the Governor to the Legislature. Pursuant to this provision, existing law, Government Code sec. 8523, requires the Governor to submit to the “Little Hoover” Commission for study and recommendation any reorganization plan at least 30 days prior to being introduced in the Legislature.

This bill would:

1. Make findings and declarations that the state's existing energy regulatory system is fragmented, duplicative, overlapping, and confusing; that a single agency responsible for energy policy would better ensure a clear and consistent message regarding the state's policy objectives; and that a cabinet-level, gubernatorial appointee overseeing a single agency responsible for the state's energy policy would promote accountability, etc.;
 2. Express legislative intent to enact an Energy Code, under the governance of an Energy Agency, to be responsible for the development and implementation of the state's energy policy;
 3. Express additional legislative intent that the Commission carry out its regulatory powers and jurisdiction in a manner that is consistent with the state energy policy developed and refined by the Energy Agency;
 4. Require the Governor, by May 1, 2004, to examine and submit and recommendation to the state's "Little Hoover" Commission a plan for reorganization of the state's energy regulatory activities.
 5. Require the Governor, by July 1, 2004, to submit to the Legislature, such a plan, as described above, which must include the following elements:
 - a. Establish an Energy Agency responsible for all major energy policy making functions;
 - b. "Merge" the California Power Authority (CPA) and the Energy Commission (CEC) into the Energy Agency;
 - c. Eliminate the Electricity Oversight Board (EOB) and the Power Exchange (PX);
 - d. Transfer to the Energy Agency all policy making functions regarding energy matters from the Commission to the Energy Agency and establish review mechanisms to ensure that the Commission energy regulatory activities are consistent with the state's energy policy;
 - e. Transfer all energy conservation programs and oversight currently performed by the Commission to the Energy Agency; and
 - f. Establish a single siting board for electric generation and transmission and gas transmission facilities to coordinate with agencies with environmental protection responsibilities;
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1. Create an Energy Code, with skeletal definitions;
 2. Create the position of Secretary of Energy as head of the Energy Agency with, generally the power to do those things ordinarily conducted by an agency and a head of an agency;

3. Provide that the Energy Agency shall be responsible for the planning, development, and implementation of all major aspects of the state's energy policy;
4. Require the Secretary of Energy, in consultation with the Independent System Operator (ISO) to determine appropriate reserve levels to needed to maintain grid reliability and stability; and
5. Require the Commission to ensure that electrical corporations meet the reserve levels determined to appropriate by the Secretary.

Analysis: AB 808 represents another proposal in a long history of activity seeking to reconsider and reorganize the state's energy agency structure. Two successful efforts have created additional agencies, which supplanted jurisdiction previously held by the Commission (See the Warren-Alquist Act, creating the CEC, and Chapter 854, Statutes of 1996 (AB 1890, Brulte), creating the EOB).

Several efforts proposed and debated during the 1990's sought to consolidate energy agencies under a cabinet-level agency. See AB 2468 (Conroy) (as amended April 28, 1994) (died in Committee, May 9, 1994) http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_2451-2500/ab_2468_bill_940428_amended_asm.html; Governors Reorganization Plan (GRP) No. 2, introduced May 31, 1995 http://info.sen.ca.gov/cgi-bin/postquery?bill_number=grp_2&sess=9596&house=B&site=sen.

GRP 2 would have eliminated the CEC, transferred all existing divisions and functions of the CEC and the Department of Conservation, except recycling, to a newly created Department of Energy and Conservation, moved the recycling program to a modified Integrated Waste Management Board and removed oil oversight functions from the State Lands Commission. The "Little Hoover" Commission approved the plan, but qualified its approval by requesting the Wilson Administration to consider adding a public member to the new Energy Facilities Siting Board and requiring the adoption of an explicit state energy policy each two years that will be a guide for all policy decisions. Upon introduction, the Wilson Administration included such a provision. (See Little Hoover Commission, *Review of Governor's Reorganization Plan No. 1*,¹ March 1995, Report #131 <http://www.lhc.ca.gov/lhcdir/131rp.html>.)

Other energy reorganization discussions have indicated that resolution of the state's energy regulatory structure should govern the manner of energy reorganization. See Legislative Analysts Office, *Analysis of the 2003-04 Budget Bill*, February 2003 at B-72 http://www.lao.ca.gov/analysis_2003/resources/res_9_cc_ferc_representation_anl03.htm

1 As analyzed by the "Little Hoover" Commission, the proposal was numbered GRP No. 1. Prior to being introduced in the Legislature during the 1995-96 session, another GRP merging the State Police and the California Highway Patrol was introduced as GRP No. 1. Therefore, upon introduction, the energy reorganization plan was numbered GRP No. 2.

[m# Toc32388534](#) (stating, “[t]here continues to be significant uncertainty regarding the future structure of the state's electricity market. This has made it difficult to evaluate what role the state will have in overseeing the state's electricity market in the future and whether the current organizational structure of the state's energy-related agencies is appropriate.” See also, Little Hoover Commission, *When Consumers Have Choices: The State's Role in Competitive Utility Markets*, December 1996, Report #139 <http://www.lhc.ca.gov/lhcdir/139/139rpt.html>.)

Joint Agency Efforts in 2003

In 2003, the Commission has worked to develop and implement an Energy Action Plan (EAP) with sister agencies, the CEC and the CPA. The plan, approved by all three agencies, contains goals to ensure that adequate, reliable, and reasonably priced electrical power and natural gas supplies, including prudent reserves, are achieved and provided through policies, strategies, and actions that are cost-effective and environmentally sound for California's consumers and taxpayers. This plan represents an unprecedented effort at agency coordination by these three agencies, working within the current structure.

Ratemaking and Policy

AB 808 would provide that the new Energy Agency would be responsible for “all aspects of the state energy policy.” Good government reform should improve government accountability to taxpayers and consumers, and match roles with structure.

It should recognize the importance of integrated infrastructure planning and procurement, of generation, transmission, and efficiency investment and development, of the rate effects of procurement and investment choices, to stabilizing the provision of energy services to Californians.

Responsibility for the cost and service quality consequences to consumers and California's economy of these choices should not be separated from the investment authority. To do so would undermine accountability for the investment choice.

The bill's apparent restriction of the Commission's ratemaking responsibilities could lead to these negative results. The Commission's ratemaking functions should not be constrained in a manner that reduces accountability to consumers and other actors in the regulatory process for decisions that either impose costs or carry other consequences resulting from costs savings.

Therefore, the Commission seeks the following amendments to AB 808:

AMENDMENTS

(Page 6, lines 9-14)

SECTION 1. The Legislature finds and declares all of the following: ...

(h) It is the further intent of the Legislature that the Public Utilities Commission continue to carry out its regulatory powers and jurisdiction over public utilities in a manner that is consistent with the state's overall energy policy, as developed and defined by the Energy Agency. The Energy Agency will set policy and the Public Utilities Commission will implement it in the regulatory arena.

(Page 7, lines 3-7)

(c) The Governor's plan of reorganization shall include all of the following provisions:

...

~~(5) Transfer to the Energy Agency all policymaking functions with respect to energy matters currently performed by the Public Utilities Commission and establish review mechanisms to ensure that the regulatory activities of the Public Utilities Commission are consistent with the state's energy policy.~~

(Page 13, lines 17-25)

1000. (a) The agency shall be responsible for the planning, development, and implementation of all major aspects of the state energy policy. The state energy policy will ensure an adequate, reasonably priced supply of electricity and natural gas.

(b) When agencies, departments, and commissions retain powers and authority with respect to energy programs, those agencies, departments, and commissions shall coordinate their activities with the agency and not act in a manner that defeats the state energy policy provided the Public Utilities Commission retains the authority to establish policies to insure that energy ratemaking and related financial decisions are just and reasonable and in the best interests of all parties to proceedings before the Public Utilities Commission.

LEGISLATIVE HISTORY

Assembly Floor: 75-0 (pass to Senate) (5/29/03)

Assembly Approps.: 24-0 (do pass) (5/28/03)

Assembly U&C: 11-0 (do pass) (5/8/03)

SUPPORT/OPPOSITION

Support: Alliance for Retail Energy Markets, APS Energy Services, California Chamber of Commerce, California Business Roundtable, Pacific Gas & Electric.

Opposition: California Municipal Utilities Association.

LEGISLATIVE STAFF CONTACT

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Date: June 5, 2003

BILL LANGUAGE:

BILL NUMBER: AB 808 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 30, 2003

INTRODUCED BY Assembly ~~Member~~ Members
Canciamilla and Richman
(Coauthors: Assembly Members *Diaz and Levine*)

FEBRUARY 20, 2003

~~An act to enact the Energy Code, to repeal Division 3 (commencing with Section 3000) of, and to repeal Division 15 (commencing with Section 25000) of, the Public Resources Code, to repeal Chapter 2.3 (commencing with Section 330) of Part 1 of Division 1 of, to repeal Chapter 4 (commencing with Section 701) of Part 1 of Division 1 of, to repeal Chapter 5 (commencing with Section 1001) of Part 1 of Division 1 of, to repeal Chapter 7 (commencing with Section 1351) of Part 1 of Division 1 of, to repeal Chapter 8 (commencing with Section 1401) of Part 1 of Division 1 of, to repeal Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of, to repeal Chapter 10 (commencing with Section 1901) of Part 1 of Division 1 of, to repeal Chapter 11 (commencing with Section 2100) of Part 1 of Division 1 of, and to repeal Division 1.5 (commencing with Section 3300) of, the Public Utilities Code, and to repeal Division 27 (commencing with Section 80000) of the Water Code, relating to energy.~~ An act to enact the Energy Code, and to amend Sections 11550 and 12800 of the Government Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 808, as amended, ~~Richman~~ *Canciamilla*
Energy: agency consolidation.
~~The~~

(1) The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. Under that act, the Energy Commission also administers existing law with respect to energy conservation and renewable electricity generation sources

Existing law authorizes the Public Utilities Commission to regulate public utilities, including electrical and gas corporations.

Under existing law, the commission is charged with issuing certificates of public convenience and necessity to every electrical and gas corporation proposing to construct or modify any electric or gas plant within the state, is authorized to determine the value of the property of every public utility in the state, to fix the just compensation to be paid by a political subdivision for public utility property acquired by eminent domain, to hold hearings concerning

complaints against certain entities, including electrical and gas corporations, and to charge and collect certain fees. Under existing law, a public utility is guilty of a crime for failing to comply with provisions of the Public Utilities Act, the California Constitution, or an order by the commission.

Under existing law, the California Consumer Power and Conservation Financing Authority Act establishes the California Consumer Power and Conservation Financing Authority (Power Authority), with certain powers and responsibilities, including the issuance of up to \$5,000,000,000 of revenue bonds, for the purposes of augmenting electric generating facilities and ensuring a sufficient and reliable supply of electricity.

~~Existing law authorizes the Department of Water Resources to enter into contracts for the purchase and sale of electricity in accordance with specified requirements.~~

Existing law establishes the Division of Oil, Gas, and Geothermal Resources within the Department of Conservation.

This bill would enact the Energy Code ~~— The bill would delete the above described provisions of existing law and would establish the Department of Energy~~

Agency under the administration of the Secretary for Secretary of Energy, who would be appointed by the Governor and subject to confirmation by the Senate. The bill would state the intent of the Legislature to propose changes in existing law to transfer to the department all the duties, powers, purposes, responsibilities, and jurisdiction of the Public Utilities Commission relating to the ownership, operation, control, and management of a line, plant, or system for the production, generation, transmission, and furnishing of heat, light, and power directly or indirectly to or for the public. The bill would transfer to the department all the duties, powers, purposes, responsibilities, and jurisdiction of the Power Authority, the Energy Commission, and the Department of Water Resources relating to the purchase and sale of electric power. The bill would require all the officers and employees of the Power Authority, the Energy Commission, and the Department of Water Resources who, on the operative date of this bill are exercising any duty, power, purpose, responsibility, or jurisdiction to which the department succeeds to, to be employed by the department. The agency would be responsible for the planning, development, and implementation of all major aspects of the state energy policy to ensure an adequate, reasonably priced supply of electricity and natural gas. The secretary, in consultation with the Independent System Operator, would be required to determine appropriate reserve levels needed to maintain the reliability and stability of the electrical transmission and distribution grid and the Public Utilities Commission would be required to ensure that electrical corporations meet the reserve levels determined to be appropriate by the secretary.

~~— This bill would establish an Energy Reliability Board consisting of a chairperson, appointed by the Governor and confirmed by the Senate, the secretary of the department, a representative of public utilities, appointed by the Governor and confirmed by the Senate, and an energy ratepayer, appointed by the Governor and confirmed by the Senate. The bill would declare the intent of the Legislature to propose changes to existing law to vest the board with all ratemaking powers for electrical transmission and distribution, and natural gas transportation, consistent with former powers of the Public Utilities Commission with respect to the regulation of the electrical and natural gas industries.~~

~~—The—~~

(2) The existing restructuring of the electrical services industry establishes the Electricity Oversight Board (Oversight Board) to oversee the Independent System Operator and the Power Exchange in order to ensure the success of the electrical industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure.

Existing law establishes the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy (commission) to promote economy, efficiency, and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government.

Existing law authorizes the Governor to perform executive branch reorganizations for certain purposes, except an agency whose primary purpose is service to the legislative or judicial branches or any agency that is administered by an elective officer. The reorganization plan becomes effective on the 61st day after it has been given to the Legislature unless either the Senate or the Assembly adopts, by majority vote, a resolution rejecting the plan. The Governor is required to submit for study and recommendation any reorganization plan to the Little Hoover Commission at least 30 days prior to submitting the plan to the Legislature.

This bill would require the Governor to examine and on or before May 1, 2004, submit for study and recommendation to the Little Hoover Commission, and on or before July 1, 2004, transmit to the Legislature, a plan for reorganization of the energy regulatory activities of the state. The plan of reorganization would be required to (1) establish within the Energy Agency all major policy making functions with respect to the state's energy policy; (2) merge the California Consumer Power and Conservation Financing Authority and the State Energy Resources Conservation and Development Commission into the Energy Agency; (3) eliminate the Electricity Oversight Board; (4) eliminate the Power Exchange; (5) transfer to the Energy Agency all policy making functions with respect to energy matters currently performed by the Public Utilities Commission and establish review mechanisms to ensure that the regulatory activities of the Public Utilities Commission are consistent with the state's energy policy; (6) transfer to the Energy Agency all energy conservation programs and oversight currently performed by the Public Utilities Commission; and (7) establish a single board responsible for the siting of electrical generation and transmission facilities and natural gas transmission facilities that will coordinate with agencies with environmental protection responsibilities.

~~—This bill would delete these provisions.~~

~~—The bill would declare the intent of the Legislature to codify the provisions that would be repealed by the bill in the Energy Code under the governance of the department, the Independent System Operator, and the Energy Reliability Board.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~—SECTION 1. The Energy Code is enacted, to read:—~~

SECTION 1. The Legislature finds and declares all of the following:

(a) California's existing energy regulatory system has resulted in significant fragmentation, duplication, overlap, and confusion in the formulation and execution of the state's energy related functions.

(b) Having a single agency that is responsible for the state's energy policy will better ensure that the state sends a clear and consistent message to the public, the business community, the energy industry, and financial markets relative to policy objectives and the means to carry out those objectives. Consolidating energy policy making into a single lead agency will ensure that all agencies advocate for, and carry out, one state energy policy, rather than disagreeing on elements of energy policy as they have in the past.

(c) Having a cabinet-level gubernatorial appointee with responsibility for overseeing a single agency that is responsible for the state's energy policy will promote accountability to the Legislature and the public for policy, legal, and administrative actions.

(d) Having a single agency that is responsible for the state's energy policy will eliminate duplication of effort and save money in research, developing policy, program design and coordination, program implementation, consumer protection, and compliance with environmental objectives and protections. Consolidation will reduce the number of high-level officials responsible for policy, legal, communications, and administrative issues.

(e) Having a cabinet-level gubernatorial appointee with responsibility for overseeing a single agency that is responsible for the state's energy policy will allow for more timely and comprehensive responses to shortages, emergencies, and enforcement issues, because of decreased potential for conflicts between agencies.

(f) It is the intent of the Legislature to enact an Energy Code, under the governance of the Energy Agency.

(g) It is the further intent of the Legislature that the Energy Agency be responsible for the development of the state's energy policy and for strategic planning on how to implement the state's energy policy.

(h) It is the further intent of the Legislature that the Public Utilities Commission carry out its regulatory powers and jurisdiction over public utilities in a manner that is consistent with the state's energy policy, as developed and refined by the Energy Agency. The Energy Agency will set policy and the Public Utilities Commission will implement it in the regulatory arena.

(i) It is the further intent of the Legislature that the joint Legislative Audit Committee, Senate Energy, Utilities and Communications Committee, and Assembly Utilities and Commerce Committees hold regular oversight hearings on agency activities, including agency expenditures and policy planning.

SEC. 2. (a) The Governor shall examine and on or before May 1, 2004, submit for study and recommendation to the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy established pursuant to Chapter 6 (commencing with Section 8501) of Division 1 of Title 2 of the Government Code, a plan for reorganization of the energy regulatory activities of the state, pursuant to Article 7.5 (commencing with Section 12080) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code.

(b) The Governor shall on or before July 1, 2004, transmit to the Legislature, a plan for reorganization of the energy regulatory activities of the state pursuant to Article 7.5 (commencing with Section 12080) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code.

(c) The Governor's plan of reorganization shall include all of the following provisions:

(1) Establish within the Energy Agency all major policy making functions with respect to the state's energy policy.

(2) Merge the California Consumer Power and Conservation Financing Authority and the State Energy Resources Conservation and Development Commission into the Energy Agency.

(3) Eliminate the Electricity Oversight Board.

(4) Eliminate the Power Exchange.

(5) Transfer to the Energy Agency all policy making functions with respect to energy matters currently performed by the Public Utilities Commission and establish review mechanisms to ensure that the regulatory activities of the Public Utilities Commission are consistent with the state's energy policy.

(6) Transfer to the Energy Agency all energy conservation programs and oversight currently performed by the Public Utilities Commission.

(7) Establish a single board responsible for the siting of electrical generation and transmission facilities and natural gas transmission facilities, that will coordinate with agencies with environmental protection responsibilities.

SEC. 3. The Department of Finance may direct the transfer of unexpended and unencumbered balances of appropriations and other funds available for use in connection with any function affected by the reorganization prescribed by the act adding this section that the Director of Finance determines to be necessary to facilitate the reorganization, for use in connection with the functions affected by the reorganization, provided that any unexpended and unencumbered balances of appropriations and other funds so transferred shall be expended, as to appropriations, only for purposes that were authorized by the appropriation and, as to other available funds, only for purposes authorized as of the effective date of the act adding this section.

SEC. 4. The Energy Code is enacted, to read:

DIVISION 1. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

1. This code is known as the Energy Code.

2. Division, chapter, article, and section headings do not affect the scope, meaning, or intent of this code.

3. Unless the provision or context otherwise requires, the general provisions and rules of construction in this division govern the construction of this code.

4. If a reference is made to a portion of this code or to another law, the reference applies to all amendments and additions regardless of the time made.

5. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case

may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code unless some other statute or code is specifically mentioned.

(f) "Subdivision" means a subdivision of the section in which that term occurs unless some other section is expressly mentioned.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

(h) "Subparagraph" means a subparagraph of the paragraph in which that term occurs.

6. The present tense includes the past and future tenses, and the future, the present.

7. The masculine gender includes the feminine and the neuter.

8. The singular number includes the plural, and the plural, the singular.

9. "Shall" is mandatory and "may" is permissive. "Shall not" and "may not" are prohibitory.

10. "Oath" includes affirmation.

11. "Signature" or "subscription" includes mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

12. "State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia and the territories.

13. "County" includes city and county.

14. "City" includes city and county and "incorporated town," but does not include "unincorporated town" or "village."

15. If a provision or clause of this code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code that can be given effect without the invalid provision or application, and to this end, the provisions of this code are severable.

16. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by this code, but all procedure thereafter taken therein shall conform to this code in so far as possible.

17. Whenever a power is granted to, or a duty is imposed upon, a public officer, including the Director of Energy, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

18. Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement, petition, or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise. Wherever any notice or other communication is required by this code to be mailed by registered mail by or to any person or corporation, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of law.

19. Whenever reference is made to any portion of this code or of any other law of this state, the reference applies to all amendments

and additions heretofore or hereafter made.

CHAPTER 2. DEFINITIONS

100. The following terms have the following meanings and shall govern the construction of this code, unless the provision or the context otherwise requires.

101. "Agency" means the Energy Agency.

102. "Corporation" includes a corporation, a company, an association, and a joint stock association.

103. "Person" includes an individual, a firm, and a copartnership.

104. "Secretary" means the Secretary of Energy.

105. As used in this code "person" and "corporation" include the lessees, trustees, receivers or trustees appointed by any court whatsoever, of the person or corporation.

106. "Public or any portion thereof" means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the state, for which the service is performed or to which the commodity is delivered.

DIVISION 2. ENERGY AGENCY

CHAPTER 1. ADMINISTRATION

200. The Energy Agency is hereby established.

201. (a) The agency is administered by the Secretary of Energy.

(b) The secretary is appointed by the Governor and subject to confirmation by the Senate.

202. (a) The secretary shall direct the departments and staff of the agency, in the performance of their duties, in accordance with statutes and agency policies and guidelines. The secretary shall be responsible for the agency's executive and administrative duties and shall organize, coordinate, supervise, and direct the operations and affairs of the agency and expedite all matters within the agency's jurisdiction.

(b) The secretary shall keep a full and true record of all proceedings of the agency, issue all necessary process, writs, warrants, and notices, and perform such other duties as are necessary to carry out the duties of the agency. The secretary may dismiss complaints or applications when all parties are in agreement thereto, in accordance with rules that the agency may prescribe.

(c) The secretary may appoint assistant executives who may serve warrants and other process in any county or city and county of this state.

203. The secretary may employ any officers, administrative law judges, experts, engineers, statisticians, accountants, inspectors, clerks, and employees as the secretary deems necessary to carry out or to perform the duties and exercise the powers conferred upon the agency by law. All officers and employees shall receive compensation as is established by the secretary.

204. (a) The agency shall adopt procedures on the disqualification of administrative law judges due to bias or prejudice similar to those of other state agencies and superior courts.

(b) The agency shall develop the procedures with the opportunity for public review and comment.

205. The agency may do any of the following:

- (a) Apply for and accept grants and contributions, and expend appropriations.
- (b) Contract for professional work or services if work or services cannot be satisfactorily performed by its employees or by any other state agency.
- (c) Be sued and sue.
- (d) Request and utilize the advice and services of all federal, state, regional, and local agencies.
- (e) Adopt any rule or regulation, or take any action, that the director determines to be reasonable and necessary to carry out this code. The agency shall adopt rules and regulations, as necessary, to carry out this code in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

206. The provisions of this division specifying any power or duty of the agency shall be liberally construed, to carry out the objectives of this code.

207. As to any matter involving the federal government, its departments or agencies, that is within the scope of the powers and duties of the agency, the director may represent its interest or the interest of any county, city, state agency, or district upon its request, and to that end may correspond, confer, and cooperate with the federal government, and its departments or agencies.

208. The secretary may participate as a party in any proceeding before any federal or state agency having authority whatsoever to approve or disapprove any aspect of a proposed facility, receive notice from any applicant of all applications and pleadings filed subsequently by those applicants in any such proceeding, and, upon request, receive copies of any such subsequently filed applications and pleadings that the director shall determine to be necessary.

CHAPTER 2. OFFICES AND MEETINGS

250. (a) The agency shall maintain its headquarters in the County of Sacramento and may establish branch offices in those parts of the state that the agency determines to be necessary.

(b) The meetings of the agency shall be open and public in accordance with Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The agency shall have a seal, bearing the inscription "Energy Agency." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the director shall direct.

(d) The agency may procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus, and appliances.

CHAPTER 3. RECORDS

260. The agency shall make available any information filed or submitted pursuant to this code under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except that the agency shall keep confidential any information submitted to the agency that the secretary determines to be proprietary, or the disclosure of which would likely injure competition. The secretary shall annually report

to the Legislature, summary information concerning information withheld from the public pursuant to this section.

CHAPTER 4. LEGAL AFFAIRS

300. The Legal Affairs Department is established in the Energy Agency, administered by the agency counsel, with responsibility for facility compliance, permit condition compliance, energy market enforcement, and representation of the state's proprietary interests and the interests of ratepayers.

301. (a) The secretary may appoint as agency counsel, an attorney at law of this state, who shall hold office during the pleasure of the secretary.

(b) The attorney shall represent and appear for the people of the State of California and the agency in all actions and proceedings involving any question under this code or under any order or act of the agency. If directed to do so by the secretary, the attorney shall intervene, if possible, in any action or proceeding in which any such question is involved.

(c) The attorney shall commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the secretary, advise the secretary, when so requested, in regard to all matters in connection with the powers and duties of the agency and the members thereof, and generally perform all duties and services as attorney to the agency that the secretary may require of him or her.

DIVISION 3. ENERGY POLICY AND PLANNING

1000. (a) The agency shall be responsible for the planning, development, and implementation of all major aspects of the state energy policy. The state energy policy will ensure an adequate, reasonably priced supply of electricity and natural gas.

(b) When agencies, departments, and commissions retain powers and authority with respect to energy programs, those agencies, departments, and commissions shall coordinate their activities with the agency and not act in a manner that defeats the state energy policy.

1001. The secretary, in consultation with the Independent System Operator, shall determine appropriate reserve levels needed to maintain the reliability and stability of the electrical transmission and distribution grid. The Public Utilities Commission shall ensure that electrical corporations meet the reserve levels determined to be appropriate by the secretary.

SEC. 5. Section 11550 of the Government Code is amended to read:

11550. Effective January 1, 1988, an annual salary of ninety-one thousand fifty-four dollars (\$91,054) shall be paid to each of the following:

- (a) Director of Finance.
- (b) Secretary of Business, Transportation and Housing.
- (c) Secretary of Resources.
- (d) Secretary of Health and Human Services.
- (e) Secretary of State and Consumer Services.
- (f) Commissioner of the California Highway Patrol.
- (g) Secretary of the Youth and Adult Correctional Agency.
- (h) Secretary of Food and Agriculture.
- (i) Secretary of Technology, Trade, and Commerce.

- (j) Secretary of Veterans Affairs.
- (k) Secretary of Labor and Workforce Development.
- (l) *Secretary of Energy.*

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 6. Section 12800 of the Government Code is amended to read:

12800. There are in the state government the following agencies: State and Consumer Services; Business, Transportation and Housing; California Environmental Protection; California Health and Human Services; *Energy*; Labor and Workforce Development; Resources; Technology, Trade, and Commerce; and Youth and Adult Correctional.

Whenever the term "Agriculture and Services Agency" appears in any law, it means the "State and Consumer Services Agency," and whenever the term "Secretary of Agriculture and Services Agency" appears in any law, it means the "Secretary of State and Consumer Services."

Whenever the term "Business and Transportation Agency" appears in any law, it means the "Business, Transportation and Housing Agency," and whenever the term "Secretary of the Business and Transportation Agency" appears in any law, it means the "Secretary of Business, Transportation and Housing."

Whenever the term "Health and Welfare Agency" appears in any law, it means the "California Health and Human Services Agency," and whenever the term "Secretary of the Health and Welfare Agency" appears in any law, it means the "Secretary of California Health and Human Services."

~~DIVISION 1. PRELIMINARY PROVISIONS~~
~~Article 1. General Provisions~~

- ~~1. This code is known as the Energy Code.~~
- ~~2. Division, chapter, article, and section headings do not affect the scope, meaning, or intent of this code.~~
- ~~3. Unless the provision or context otherwise requires, the general provisions and rules of construction in this division govern the construction of this code.~~
- ~~4. If a reference is made to a portion of this code or to another law, the reference applies to all amendments and additions regardless of the time made.~~
- ~~5. Unless otherwise expressly stated:~~
 - ~~(a) "Division" means a division of this code.~~
 - ~~(b) "Part" means a part of the division in which that term occurs.~~
 - ~~(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.~~
 - ~~(d) "Article" means an article of the chapter in which that term occurs.~~
 - ~~(e) "Section" means a section of this code.~~
 - ~~(f) "Subdivision" means a subdivision of the section in which that term occurs.~~
 - ~~(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.~~
 - ~~(h) "Subparagraph" means a subparagraph of the paragraph in which that term occurs.~~
- ~~6. The present tense includes the past and future tenses, and the~~

~~future, the present.~~

~~7. The singular number includes the plural, and the plural, the singular.~~

~~8. "Shall" is mandatory and "may" is permissive. "Shall not" and "may not" are prohibitory.~~

~~9. If a provision or clause of this code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code that can be given effect without the invalid provision or application, and to this end, the provisions of this code are severable.~~

~~10. (a) Any reference in any code to the California Consumer Power and Conservation Financing Authority, the State Energy Resources Conservation and Development Commission, or the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, shall be deemed to refer to the Department of Energy.~~

~~(b) Any reference in any code to the Department of Water Resources relating to the purchase or sale of electric power pursuant to Division 27 (commencing with Section 80000) of the Water Code, shall be deemed to refer to the Department of Energy.~~

~~Article 2. Definitions~~

~~11. As used in this code, unless otherwise indicated, the following terms have the following meanings:~~

~~(a) "Department" means the Department of Energy.~~

~~DIVISION 2. DEPARTMENT OF ENERGY~~

~~50. The Department of Energy is hereby established.~~

~~51. (a) The department is administered by the Secretary for Energy.~~

~~(b) The secretary is appointed by the Governor and subject to confirmation by the Senate.~~

~~52. (a) It is the intent of the Legislature to propose changes in existing law so that the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the Public Utilities Commission relating to the ownership, operation, control, and management of a line, plant, or system for the production, generation,~~

~~transmission, and furnishing of heat, light, and power directly or indirectly to or for the public.~~

~~(b) (1) Notwithstanding any other provision of law, except as specified in paragraph (2), the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the California Consumer Power and Conservation Financing Authority.~~

~~(2) Notwithstanding Section 3380.1 of the Public Utilities Code, the department may issue bonds only for the purposes of energy conservation in an amount not to exceed one billion dollars (\$1,000,000,000), exclusive of any refunds.~~

~~(c) Notwithstanding any other provision of law, the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the State Energy Resources Conservation and Development Commission.~~

~~(d) Notwithstanding any other provision of law, the department succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation.~~

~~(e) Notwithstanding any other provision of law, the department~~

~~succeeds to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction of the Department of Water Resources relating to the purchase and sale of electric power pursuant to Division 27 (commencing with Section 80000) of the Water Code.~~

~~53. All officers and employees of the Public Utilities Commission, the California Consumer Power and Conservation Financing Authority, the State Energy Resources Conservation and Development Commission, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, and the Department of Water Resources who, on the operative date of this section, are serving in the state civil service, other than as temporary employees, and are exercising any duty, power, purpose, responsibility, or jurisdiction to which the department succeeds pursuant to Section 52, are transferred to the department. The status, positions, and rights of those persons existing prior to the transfer shall not be affected by the transfer and shall be retained by those persons as officers and employees of the agency, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to positions exempted from civil service.~~

~~54. The department shall have possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, agreements, contracts, claims, judgments, and land or other property, real or personal, connected with the administration of, or held for the benefit or use of, the Public Utilities Commission, the California Consumer Power and Conservation Financing Authority, the State Energy Resources Conservation and Development Commission, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, and the Department of Water Resources for the performance of the functions transferred to the department by Section 52.~~

~~DIVISION 3. ENERGY RELIABILITY BOARD~~

~~75. The Energy Reliability Board is hereby established.~~

~~76. It is the intent of the Legislature to propose changes in existing law to vest the Energy Reliability Board with all ratemaking powers for electrical transmission and distribution, and natural gas transportation, consistent with former powers of the Public Utilities Commission with respect to the regulation of the electrical and natural gas industries.~~

~~77. The Energy Reliability Board shall consist of five members as follows:~~

~~(a) A chairperson, appointed by and serving at the pleasure of, the Governor, subject to confirmation by the Senate.~~

~~(b) The secretary of the department.~~

~~(c) The chairperson of the Independent System Operator.~~

~~(d) A representative of public utilities, who shall be appointed by the Governor, confirmed by the Senate, for an initial two-year term, and four-year terms thereafter.~~

~~(e) An energy ratepayer, who shall be appointed by the Governor, confirmed by the Senate, for an initial three-year term, and four-year terms thereafter.~~

~~SEC. 2. Division 15 (commencing with Section 25000) of the Public Resources Code is repealed.~~

~~SEC. 3. Chapter 2.3 (commencing with Section 330) of the Public Utilities Code is repealed.~~

~~SEC. 4. Chapter 4 (commencing with Section 701) of the Public~~

~~Utilities Code is repealed.~~

~~—SEC. 5. Chapter 5 (commencing with Section 1001) of the Public Utilities Code is repealed.~~

~~—SEC. 6. Chapter 7 (commencing with Section 1351) of the Public Utilities Code is repealed.~~

~~—SEC. 7. Chapter 8 (commencing with Section 1401) of the Public Utilities Code is repealed.~~

~~—SEC. 8. Chapter 9 (commencing with Section 1701) of the Public Utilities Code is repealed.~~

~~—SEC. 9. Chapter 10 (commencing with Section 1901) of the Public Utilities Code is repealed.~~

~~—SEC. 10. Chapter 11 (commencing with Section 2100) of the Public Utilities Code is repealed.~~

~~—SEC. 11. Division 1.5 (commencing with Section 3300) of the Public Utilities Code is repealed.~~

~~—SEC. 12. Division 27 (commencing with Section 80000) of the Public Utilities Code is repealed.~~

~~—SEC. 13. It is the intent of the Legislature in subsequent legislation to codify the repealed provisions set forth in Sections 2 to 12, inclusive, of this act in the Energy Code under the governance of the Department of Energy, the Independent System Operator, and the Energy Reliability Board. It is further the intent of the Legislature to abolish the Electricity Oversight Board.~~